

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CARL WILSON, an individual,
and AUDREE WILSON, an
individual,

Plaintiffs,

v.

HARPERCOLLINS PUBLISHERS,
INC., a Delaware corporation,
Defendant.

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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Case No. CIV 94 892 JC

CLERK-ALBUQUERQUE

**RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
PRECLUDE PLAINTIFFS' USE OF EXPERTS**

Come now Plaintiffs Audree Wilson and Carl Wilson to respond in opposition to Defendant HarperCollins' Motion to Preclude Plaintiffs' Use of Experts, as follows:

1. The Initial Scheduling Order entered November 23, 1994 set a deadline of February 1, 1995 for Plaintiffs to designate expert witnesses and produce expert reports with regard to Phase One of Discovery. With regard to Plaintiffs, Phase One Discovery concerns the question of whether Defendant HarperCollins exercised the requisite standard of care in publishing "Wouldn't It Be Nice," (the "Book"). After Phase One Discovery on that issue and the issue of the "public" versus "private" status of Plaintiffs, Defendant HarperCollins will move for summary judgment. If denied, Phase Two Discovery will begin, during which Defendant will pursue discovery on the issues of truth and Plaintiffs' damages.

2. Plaintiffs respectfully ask the Court to excuse their counsel's failure to meet the original deadline, and deny the preclusion sanction requested by Defendant as inappropriately harsh, in view of the circumstances of the case, the nature of the experts' testimony and the lack of any specific showing of prejudice by Defendant HarperCollins.

3. As more fully appears in Plaintiffs' Memorandum in Opposition to Defendant's Motion to Preclude Plaintiffs' Use of Experts, good and sufficient cause exist under the circumstances for the Court to modify the Scheduling Order and grant Plaintiffs' Motion for Extension of Time to Designate Experts, which is pending, thereby rendering Defendant's instant Motion moot.

WHEREFORE, Plaintiffs Audree Wilson and Carl Wilson ask the Court to deny Defendant's Motion to Preclude Plaintiffs' Use of Experts.

Respectfully submitted,

Attorneys for Plaintiffs,
Carl Wilson and Audree Wilson:

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By: 

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CERTIFICATE OF SERVICE

I certify I caused a true copy of the foregoing pleading to be hand delivered to opposing counsel, William S. Dickson, Esq., and mailed to Defendant, care of Mr. Dickson's co-counsel, Bruce Rich, Esq., Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153. This 2d day of March, 1995, with first class postage affixed.



Ernesto Romero